



Larry Fenster
Senior Economist
Law and Public Policy
1133 19th St., NW
Washington, DC 20036
202-736-6513

January 17, 2003

Jeffrey Carlisle
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Ex Parte Communication Regarding Statutory Authority To Grant Extension
of Time For A Petition For Reconsideration**

In our conversation today you asked me to provide citations demonstrating that the Commission has authority to grant extensions of time for petitions for reconsideration. As the D.C. Circuit has made clear, the thirty-day deadline within which reconsideration petitions must normally be filed, 47 U.S.C. § 405(a), “has never been construed to be an absolute bar on reconsideration of issues raised after thirty days.” *Meredith Corp. v. FCC*, 809 F.2d 863, 869 (D.C. Cir. 1987); *see also Greater Boston Television Corp. v. FCC*, 463 F.2d 268, 283 (D.C. Cir. 1972) (“so long as the time for appeal to the court has not expired the FCC has jurisdiction to provide reconsideration in its sound discretion”). Accordingly, the Commission plainly retains the authority to consider WorldCom’s petition for reconsideration, which was filed yesterday, January 16, 2003. Granting the petition is particularly warranted in this case, as I spoke with Jon Stover on two different occasions (December 27, 2002 within the otherwise applicable 30 day time period, and again on January 7, 2003) and was informed that the Commission would grant our requested extension. Had we not received such assurances, we could have filed the petition within the otherwise applicable 30 day period.

In any event, even if the Commission now reverses course and decides not to grant the request for an extension of time, our petition for reconsideration was timely filed. Pursuant to the 47 C.F.R. §. 1.46(b), a timely filed motion for an extension of time tolls the time within which a pleading must be filed “until 2 business days after the Commission acts on the motion.” Because the

Commission has not yet formally acted on our motion for an extension of time, the filing of our petition for reconsideration yesterday is plainly timely.

Finally, in addition to a request for an extension of time, WorldCom yesterday filed, in the alternative, a petition for rescission. The Commission's rules enable "any aggrieved party to petition for the . . . repeal of a regulation," 47 C.F.R. § 1.401(a) (2002), and place no limit on the time within which parties may bring such a petition, *see id.* § 1.401. Accordingly, no matter what action the Commission takes with respect to the petition for reconsideration, the Commission must consider WorldCom's petition for rescission and (1) institute notice and comment proceedings, *id.*; *see also Consumer Energy Council of Am. v. FERC*, 673 F.2d 425, 446 (D.C. Cir. 1982) or, (2) issue a final order amending the rules, 47 C.F.R. § 1.407.

If you have any further questions please contact me at the number listed above.

Sincerely,

Larry Fenster

Larry Fenster